

Evidence Ordinance

Part VIII
Section 74

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Part VIII

Evidence for Proceedings in Other Jurisdictions

*(Part VIII replaced 2 of 1977 s. 3)
(Format changes—E.R. 4 of 2018)*

74. Interpretation

In this Part, unless the context otherwise requires—

civil proceedings (民事法律程序), in relation to the requesting court, means proceedings in any civil or commercial matter;

live television link (電視直播聯繫) means a system in which two places are equipped with, and linked by, audio visual facilities that enable persons at one place to see and hear persons at the other place, and vice versa, at the same time; *(Added 23 of 2003 s. 12)*

requesting court (提出請求的法院) has the meaning given in section 75;

request (請求、請求書) includes any commission, order or other process issued by or on behalf of the requesting court.

[cf. 1975 c. 34 s. 9(1) U.K.]

Evidence for civil proceedings

75. Application to the Court of First Instance for assistance in obtaining evidence for civil proceedings in another court

Where an application is made to the Court of First Instance for an order for evidence to be obtained in Hong Kong and the court is satisfied—

- (a) that the application is made in pursuance of a request issued by or on behalf of a court or tribunal (*the*

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requesting court) exercising jurisdiction in a country or territory outside Hong Kong; and

- (b) that the evidence to which the application relates is to be obtained for the purposes of civil proceedings which either have been instituted before the requesting court or whose institution before that court is contemplated,

the Court of First Instance shall have the powers conferred on it by this Part.

(Amended 25 of 1998 s. 2)

[cf. 1975 c. 34 s. 1 U.K.]

76. Power of a court in Hong Kong to give effect to an application for assistance

- (1) Subject to this section, the Court of First Instance shall have power, on any such application as is mentioned in section 75, by order to make such provision for obtaining evidence in Hong Kong as may appear to the court to be appropriate for the purpose of giving effect to the request in pursuance of which the application is made; and any such order may require a person specified therein to take such steps as the court considers appropriate for that purpose. *(Amended 25 of 1998 s. 2)*
- (2) Without prejudice to the generality of subsection (1) but subject to this section, an order under this section may, in particular, make provision—
 - (a) for the examination of witnesses by any means, including by way of a live television link; *(Amended 23 of 2003 s. 13)*
 - (b) for the production of documents;
 - (c) for the inspection, photographing, preservation, custody or detention of any property;

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- (d) for the taking of samples of any property and the carrying out of any experiments on or with any property;
- (e) for the medical examination of any person.

(3) An order under this section shall not require any particular steps to be taken unless they are steps which can be required to be taken by way of obtaining evidence for the purposes of civil proceedings in the court making the order (whether or not proceedings of the same description as those to which the application for the order relates); but this subsection shall not preclude the making of an order requiring a person to give evidence otherwise than on oath where this is asked for by the requesting court. *(Amended 23 of 2003 s. 13)*

(4) An order under this section shall not require a person—

- (a) to state what documents relevant to the proceedings to which the application for the order relates are or have been in his possession, custody or power; or
- (b) to produce any documents other than particular documents specified in the order as being documents appearing to the court making the order to be, or to be likely to be, in his possession, custody or power.

(5) A person who, by virtue of an order under this section, is required to attend at any place shall be entitled to the like conduct money and payment for expenses and loss of time as on attendance as a witness in civil proceedings before the Court of First Instance. *(Amended 25 of 1998 s. 2)*

[cf. 1975 c. 34 s. 2 U.K.]

77. Privilege of witnesses

(1) A person shall not be compelled by virtue of an order under section 76 to give any evidence which he could not be compelled to give—

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- (a) in civil proceedings in Hong Kong; or
- (b) subject to subsections (2) and (2A), in civil proceedings in the country or territory in which the requesting court exercises jurisdiction. *(Amended 23 of 2003 s. 14)*
- (2) Where a person is giving evidence by any means other than by way of a live television link, subsection (1)(b) shall not apply unless the claim of the person in question to be exempt from giving the evidence is either— *(Amended 23 of 2003 s. 14)*
 - (a) supported by a statement contained in the request (whether it is so supported unconditionally or subject to conditions that are fulfilled); or
 - (b) conceded by the applicant for the order;

and where such a claim made by any person is not supported or conceded as aforesaid he may (subject to the other provisions of this section) be required to give the evidence to which the claim relates but that evidence shall not be transmitted to the requesting court if that court, on the matter being referred to it, upholds the claim.
- (2A) Where a person is giving evidence by way of a live television link, subsection (1)(b) shall not apply unless—
 - (a) the claim of the person in question to be exempt from giving the evidence is supported or conceded as mentioned in subsection (2); or
 - (b) the requesting court, on the matter being referred to it by way of a live television link, upholds the claim. *(Added 23 of 2003 s. 14)*
- (3) Without prejudice to subsection (1), a person shall not be compelled by virtue of an order under section 76 to give any evidence if his doing so would be prejudicial to the security of the United Kingdom, Hong Kong, or any other territory for

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which the United Kingdom is responsible under international law; and a certificate signed by or on behalf of the Chief Secretary for Administration to the effect that it would be so prejudicial for that person to do so shall be conclusive evidence of that fact. (*Amended 30 of 1978 s. 2; L.N. 362 of 1997*)

(4) In this section references to giving evidence include references to answering any question and to producing any document and the reference in subsection (2) to the transmission of evidence given by a person shall be construed accordingly.

[*cf. 1975 c. 34 s. 3 U.K.*]

77A. Effect of subpoena

For the purposes of this Part, a reference in a subpoena to attendance at a trial shall be construed as if it included a reference to attendance before an examiner or commissioner appointed by the court or a judge thereof in any cause or matter in that court.

[*cf. 1975 c. 34 s. 4 U.K.*]

Evidence for criminal proceedings

77B. Power of Hong Kong court to assist in obtaining evidence for criminal proceedings in an overseas court

(1) The provisions of sections 75, 76 and 77 shall have effect in relation to the obtaining of evidence for the purposes of criminal proceedings as they have effect in relation to the obtaining of evidence for the purposes of civil proceedings except that—

(a) section 75(b) shall apply only to proceedings which have been instituted or whose institution is likely if the evidence is obtained; and (*Amended 37 of 1984 s. 9*)

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- (b) an order under section 76 shall not make provision for any matter other than a matter referred to in section 76(2)(a) or (b). (*Replaced 23 of 2003 s. 15*)
- (2) In its application by virtue of subsection (1), section 77(1)(a) and (b) shall have effect as if for the words “civil proceedings” there were substituted the words “criminal proceedings”.
- (3) Nothing in this section applies in the case of criminal proceedings of a political character.

[*cf. 1975 c. 34 s. 5 U.K.*]

Supplementary

77C. Rules of court

The power to make rules of court under section 54 of the High Court Ordinance (Cap. 4) shall include power to make rules of court— (*Amended 25 of 1998 s. 2*)

- (a) as to the manner in which any such application as is mentioned in section 75 is to be made;
- (b) subject to this Part, as to the circumstances in which an order can be made under section 76; and
- (c) as to the manner in which any such reference as is mentioned in section 77(2) is to be made;

and any such rules may include such incidental, supplementary and consequential provision as the authority making the rules may consider necessary or expedient.

[*cf. 1975 c. 34 s. 7 U.K.*]

77D. Saving

Nothing in this Part shall be construed as enabling any court to make an order that is binding on the Crown or on any person in his

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capacity as an officer or servant of the Crown.

[cf. 1975 c. 34 s. 9(4) U.K.]
